

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

PATRICIA KAMMEYER, et al.	:	NO. 1:01-CV-649
Plaintiff	:	(Judge Spiegel)
		(Magistrate Judge Black)
vs.	:	
CITY OF SHARONVILLE, et al.	:	<u>NON-PARTIES NOTICE OF</u>
		<u>SUPPLEMENTAL AUTHORITY</u>
Defendants	:	

Now come non-parties Michael K. Allen (former) Hamilton County Prosecutor, John Jay, (Investigator) and Terry Gaines (former Assistant Prosecutor) who give notice to the Court of their intention to rely on a recent decision by the Sixth Circuit Court of Appeals in the case of *Chesher et al. v. Michael K. Allen, et al. and Thomas Neyer, et al.*, Case No. 04-3158/3179/3284 (a copy of which is attached hereto), in further support of their previously filed Motion for Stay of Order Denying Motion to Quash.

MEMORANDUM

The Sixth Circuit Court of Appeals on January 6, 2005 released its opinion in the case of *Chesher v. Michael K. Allen and Thomas Neyer, et al.*, Case No. 04-3158/3179/3284 (hereafter “the Chesher case.”) In the *Chesher* case the Plaintiffs are alleging a “coverup” similar to the allegations in this case and sought to depose non-party attorneys of the Hamilton County Prosecutor’s Office who objected to the taking of their depositions on the basis that the information was protected by attorney-client and work-product privilege. The trial court reversed the Magistrate Judge’s ruling quashing the subpoenas for the prosecuting attorneys’ depositions thereby permitting the requested depositions.

The Sixth Circuit reversed the trial court’s ruling and remanded the case to the trial court with instructions to complete the analysis set forth in *Shelton v. American Motors Corp.*, 805 Fed.2d 1323, 1327 (8th Cir. 1986) which was adopted by the Sixth Circuit in *Nationwide Mutual Insurance Company v. Home Insurance Company*, 278 Fed.3d 621, 628 (6th Cir. 2002). The Shelton three part test requires that:

1. Other than deposing opposing counsel no other means exist to obtain the information;
2. The information sought is non-privileged and relevant;
3. The information is crucial to the preparation of the case.

The Sixth Circuit stated in the *Chesher* case that the *Shelton* test is required to be applied in situations such as these. The Court did not conduct the *Shelton* analysis in the instant case.

The fact that the Court did not conduct the analysis as required by *Shelton* increases the likelihood that Non-Parties Michael K. Allen (former) Hamilton County Prosecutor, John Jay, (Investigator) and Terry Gaines (former Assistant Prosecutor) will prevail on the merits of their appeal of the Court's Order requiring the depositions requested by plaintiffs. The likelihood of success on the merits is a factor to be considered by the Court when considering whether to grant a stay of the order appealed. *Michigan Coalition of Radioactive Material Users Inc. v. Griepentrog*, 945 F.2d 150, 153, (6th Cir. 1991); *Delorean*, 755 F.2d 1223, 1228 (6th Cir. 1985).

Also, the denial of the motion of non-parties for a stay of the Court's order permitting the discovery will render the non-parties Sixth Circuit appeal meaningless.

Accordingly, Non-Parties Michael K. Allen (former) Hamilton County Prosecutor, John Jay, (Investigator) and Terry Gaines (former Assistant Prosecutor) respectfully move this Court to grant their Motion for Stay of Order Denying Motion to Quash.

Respectfully submitted,

JOSEPH T. DETERS
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CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2005, I electronically filed the foregoing with the Clerk of Courts using the CM/ECF system which will send notification of such filing to the following, and I hereby certify that I have mailed by United States Postal service the document to non CM/ECF participants.

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